

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 L-03 IO-14 SAJ-01 ACDA-19 SSO-00 NSCE-00

USIE-00 INRE-00 EURE-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

DRC-01 /120 W

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O R 231510Z APR 74

FM USMISSION BERLIN

TO SECSTATE WASHDC IMMEDIATE 3271

AMEMBASSY BONN IMMEDIATE

INFO AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 0684

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE

SUBJECT: BRUECKMANN CASE

REF: STATE 081956

1. ON APRIL 22 KAMMERGERICHT REJECTED INGRID BRUECKMANN'S LAWYER'S APPLICATION THAT JUDGES CONSIDERING HER APPEAL BE CHANGED ON GROUND THAT THEY WERE PREJUDICED. COURT ALSO REJECTED LAWYER'S REQUEST THAT INGRID BRUECKMANN BE RELEASED FROM PRISION. ACCORDING TO SENAT, KAMMERGERICHT'S DECISION ON WHETHER TO REOPEN BRUECKMANN CASE COULD BE MADE AS EARLY AS END OF THIS WEEK OR, ON OTHER HAND, MIGHT BE DELAYED UNTIL AFTER STRASBOURG ISSUES A DECISION IN CASE.

2. ON BASIS REFTTEL INSTRUCTIONS, WE HAVE AGREED WITH FRENCH AND BRITISH ON FOLLOWING TEXT OF LETTER TO BE ADDRESSED TO SENATOR FOR JUSTICE KORBER AND SIGNED BY CHAIRMAN DEPUTY COMMANDANT (UK). LETTER, WHICH REQUESTS KORBER TO ASSURE THAT COURT IS INFORMED OF ALLIED LEGAL POSITION, WOULD NOT BE IN FORM OF BK/L.

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3. GIVEN POSSIBILITY THAT KAMMERGERICHT DECISION
COULD BE MADE AS EARLY AS END OF WEEK, WE REQUEST
URGENT CONSIDERATION BY DEPARTMENT AND EMBASSY OF
TEXT OF LETTER. WE WOULD HOPE TO DELIVER LETTER TO
KORBER MORNING OF APRIL 24 IF POSSIBLE.

4. BEGIN DRAFT TEXT:

DEAR SENATOR KORBER:

THE ALLIED KOMMANDATURA UNDERSTANDS THAT FRAULEIN
INGRID BRUECKMANN HAS MADE APPLICATION TO THE BERLIN
KAMMERGERICHT UNDER SECTION 9 OF THE LAW ON INNER
GERMAN LEGAL ASSISTANCE OF 1953 FOR A REOPENING OF THAT
COURT'S DECISION WHICH DISMISSED THE APPEAL AGAINST
THE DECISION OF THE GENERALSTAATSANWALT AT THE KAMMER-
GERICHT OF 26 JUNE 1973. THE ALLIED KOMMANDATURA IS
ALSO AWARE OF THE JUDGEMENT OF 27 MARCH 1974 OF THE
FEDERAL CONSTITUTIONAL COURT IN THIS CASE, IN
PARTICULAR THE COURT'S FINDING THAT IT WAS NOT
COMPETENT TO REVIEW ACTS OF BERLIN PUBLIC AUTHORITIES
IN VIEW OF THE SUBSISTING RESERVATIONS TO THE BASIC
LAW CONTAINED IN THE MILITARY GOVERNORS' DECLARATION
OF 12 MAY 1949.

YOU ARE REQUESTED TO ENSURE THAT THE FOLLOWING
VIEWS OF THE ALLIED KOMMANDATURA ON THE LEGAL POSITION
ARE BROUGHT TO THE ATTENTION OF THE BERLIN KAMMERGERICHT
BY THE STAATSANWALTSCHAFT AT THE HEARING OF THE
APPLICATION REFERRED TO.

ON 20 DECEMBER 1952, IN BK/O (52)35 THE ALLIED
KOMMANDATURA DIRECTED THAT IT WAS UNABLE TO AGREE TO
THE TAKING OVER IN BERLIN OF THE LAW ON THE FEDERAL
CONSTITUTIONAL COURT ON THE GROUNDS THAT EXTENSION OF
THE COURT'S JURISDICTION TO BERLIN WOULD CONFLICT WITH
THE ALLIED RESERVATIONS ON THE BASIC LAW OF THE
FEDERAL REPUBLIC AND AS SET OUT IN BK/O(50) 75 OF
29 AUGUST 1950 WHICH ITSELF REAFFIRMED THE STATEMENT
OF PRINCIPLES OF 14 MAY 1949. THE ALLIED POSITION ON
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THE NON-COMPETENCE OF THE FEDERAL CONSTITUTIONAL
COURT FOR BERLIN MATTERS WAS CONFIRMED AND ELABORATED
IN BK/L(69)10 OF 24 MAY 1967 AND, MOST RECENTLY, IN
BK/L(74)9 OF 12 MARCH 1974 ON THE BRUECKMANN CASE ITSELF.
THE ALLIED KOMMANDATURA WOULD DRAW ATTENTION PARTICULARLY
TO THE TWO FOLLOWING PASSAGES SET OUT IN THE LAST MENTIONED
BK/L:

THE ALLIED KOMMANDATURA CONSIDERS THAT THE COURT DOES NOT HAVE JURISDICTION IN RELATION TO BERLIN AND THAT ACCORDINGLY IT IS NOT COMPETENT TO REVIEW EITHER (1) THE CONSTITUTIONALITY OF ACTS OF BERLIN AUTHORITIES: OR

(2) THE CONSTITUTIONALITY OF BERLIN LAWS INCLUDING LAWS TAKING OVER PROVISIONS OF FEDERAL LEGISLATION."

" THE ALLIED KOMMANDATURA REAFFIRMS ITS POSITION WITH RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT IN BERLIN MATTERS. THIS POSITION WAS MOST RECENTLY MADE CLEAR WHEN THE ALLIED KOMMANDATURA SPECIFICALLY REFUSED, BY LETTER OF 6 JULY 1973, THE REQUEST OF INGRID BRUECKMANN'S COUNSEL FOR AN EXCEPTIONAL RELAXATION OF ITS VIEWS TO PERMIT THIS CASE TO BE REFERRED TO THE FEDERAL CONSTITUTIONAL COURT."

THE ALLIED KOMMANDATURA ALSO REFERS TO THE LETTER OF THE THREE AMBASSADORS, TRANSMITTING THE QUADRI-PARTITE AGREEMENT OF 3 SEPTEMBER 1971 TO THE CHANCELLOR OF THE FEDERAL REPUBLIC OF GERMANY, WHICH NOTED SPECIFICALLY THE ALLIED RESERVATIONS ON THE FEDERAL CONSTITUTION IN ELABORATION OF THE RELATIONSHIP BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL REPUBLIC SET FORTH IN THE QUADRI-PARTITE AGREEMENT.

IT IS THEREFORE THE VIEW OF THE ALLIED KOMMANDATURA THAT THE JUDGMENT OF THE FEDERAL CONSTITUTIONAL COURT CANNOT BE TAKEN INTO ACCOUNT BY THE BERLIN KAMMERGICHT IN THE APPLICATION PRESENTLY BEFORE IT.
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FOR THE CONVENIENCE OF THE COURT, I ATTACH COPIES OF THE VARIOUS BK/LS AND BK/OS REFERRED TO ABOVE. THE ALLIED KOMMANDATURA WOULD ALSO HAVE NO OBJECTION TO THIS LETTER BEING PRESENTED TO THE KAMMERGERICHT BY THE STAATSANWALTSCHAFT. END TEXT.KLEIN

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